

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UBS SECURITIES LLC, and UBS LOAN  
FINANCE LLC,

Plaintiffs/Counter-Defendants,

-v-  
THE FINISH LINE, INC.,

Defendants/Counter-Plaintiff,

and

GENESCO INC.,

Defendant.  
-----x

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ELECTRONICALLY FILED  
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07 Civ. 10382

ORDER

LORETTA A. PRESKA, U.S.D.J.

Before the Court are motions by UBS and Genesco to dismiss The Finish Line's six counterclaims. (See dkt. nos. 29, 32.) Two of The Finish Line's claims (IV and V) are predicated on a hypothetical scenario whereby UBS withholds its approval of a renegotiated purchase price pursuant to a clause in the Commitment Letter which provides:

UBS shall have reviewed, and be satisfied with, the final structure of the Acquisition and the terms and conditions of the Acquisition Agreement (it being understood that UBS is satisfied with the execution version of the Acquisition Agreement received by UBS at 9:19 p.m. Los Angeles time on June 16, 2007 and the structure of the Acquisition reflected therein and the disclosure schedules to the Acquisition Agreement received by UBS at 7:47 a.m. Los Angeles time on June 17, 2007). The Acquisition and the other Transactions shall be consummated concurrently with the initial funding of the Facilities in accordance with the Acquisition Agreement without giving effect to any waivers or amendments thereof that is material and adverse to the interests of the Lenders, unless consented to by UBS in its reasonable discretion. Immediately following the Transactions, none of Borrower, the Acquired Business nor any of their subsidiaries shall have any indebtedness or preferred equity other than as set forth in the Commitment Letter.

(Commitment Letter, Annex IV ¶ 1.) As it stands, Genesco and The Finish Line have not negotiated an amendment to the Acquisition Agreement, and thus, UBS has neither given nor withheld its consent to such an amendment.

The parties are requested to brief the issue of whether the issues presented in counterclaims IV and V are presently justiciable. Memoranda shall be no more than ten pages, submitted by Friday, February 15, at 12:00 p.m.

SO ORDERED:

Dated: New York, New York  
February 13, 2008

  
LORETTA A. PRESKA, U.S.D.J.